

ClientEarth's contribution to the public consultation on the new EU Forest Strategy

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1 General remarks

More protection, less exploitation

While welcoming the European Commission's initiative of setting out a new Forest Strategy, we feel that the questionnaire misses the opportunity of gathering input that focuses on the preservation of forests, as the questions posed in the questionnaire consider forests primarily as an economic commodity to exploit. This approach does not realize the initial premise of the Strategy: to build on the EU biodiversity strategy¹ and to focus on EU forest protection, restoration and sustainable management, and on world forests where not already covered².

We urge the Commission to avoid adjusting the Strategy in response to the demands of the forestry industry and of those Member States which have a vested interest in the large-scale economic exploitation of forests, and ensure that the final document primarily guarantees the fullest possible protection of forests. Likewise, the new Strategy should avoid supporting an anthropocentric or extractivist approach to forests in which forests are primarily valued to the extent they serve or benefit human interests. It should equally prioritise the non-use of forests and the minimisation of human interference with forests wherever possible, paying particular attention to primary forests.

Underestimated relevance of illegal logging

We further note that the public consultation lacks a direct link with the EU framework against illegal logging, with the EU Timber Regulation ("EUTR") being the most important tool combining both the environmental and market-oriented approaches to EU forests. While the ultimate goal of the EUTR is to ban illegal timber and timber products from being placed on the EU market, its legal basis remains Article 192(1) of the Treaty on the Functioning of the European Union. This legal foundation bears out the core rationale behind the EUTR, being the protection of forests and sustainable use of natural resources. Given the scale and implications of illegal logging (and related trade) for forests, we are concerned that this issue is not adequately addressed in the questionnaire. By so doing, the consultation fails to consider, and the new Forest Strategy therefore risks ignoring, one of the main challenges related to forest conservation and management, as well as one of the actions identified by the Commission itself as 'key' in the Communication on Stepping up EU Action to Protect and Restore the World's Forests³: the continuing problem of illegal logging.

Looking at the big picture: the need for legal and deforestation-free global value chains

As climate neutrality is the primary goal of current efforts by the EU legislature, the new Strategy must also address the role of forests outside the EU and acknowledge the importance of legal and deforestation-free global value chains. With the EU being a leader in environmental policies, its regulatory influence on other countries can increase the protection of forests globally. However, action to preserve forests outside the EU substitutes in no way the necessity of preserving EU forests, and the new Strategy should include specific and complementary measures to do both.

¹ [Communication from the Commission of 20 May 2020 on EU Biodiversity Strategy for 2030 bringing nature back into our lives \(COM\(2020\) 380 final\)](#).

² [The summary of the initiative \(2020\)](#).

³ [Communication from the Commission of 23 July 2019 on Stepping up EU Action to Protect and Restore the World's Forests \(COM\(2019\) 352 final\)](#): 'Implement the EU FLEGT Work Plan 2018-2022, in particular strengthen the implementation of the EU Timber Regulation' (page 9).

2 Ensuring coherence and consistency

To be fully effective, the Strategy needs to **ensure coherence of forest related legislation** – including, e.g., the EUTR, Forest Law Enforcement, Governance and Trade (“FLEGT”) Regulation, and the Birds and Habitats Directives. This would ensure that the entire forest cycle is taken into account, and promotes the numerous ecological and socioeconomic services which forests provide. Therefore, the new Strategy must cover land use and logging.

The Strategy should be an instrument to coordinate all forest-related activities within the EU. As intended back in 2014, the Strategy should seek to coherently manage and better understand forests as well as **focus on forests from a global perspective**, including the conservation of non-EU forests. These goals cannot be achieved without ensuring consistency with the EUTR and FLEGT Regulation that apply to both operators who import timber from third countries and also who harvest wood within the EU, thereby constituting the core tools against illegal logging in the EU and beyond. Moreover, the Commission's 2018 Report on the Forest Strategy pointed to the effects of Land Use, Land Use Change and Forestry in a global context as key priorities which the Strategy should address. Considering this, the Strategy should fully complement climate change and biodiversity laws and policy and **take into account the dislocation effects of EU consumption patterns of forest-risk commodities**. However, the questionnaire does not take into account the interplay with and the importance of specific legislation, either already adopted – such as the EUTR and FLEGT Regulation – or in the adoption process – such as the legislative initiative to minimise the risk of deforestation and forest degradation associated with products placed on the EU market. A “new” Strategy adopted without considering ongoing complementarity with these initiatives would already be outdated, or at least partial and incomplete, at the moment of its adoption. We urge the Commission to integrate the future application, implementation and innovation of these existing and pending instruments in the new Forest Strategy and include a framework to facilitate their ongoing evolution and the uplifting of the requirements they establish.

Moreover, the implementation and enforcement of existing obligations must be improved consistently across all legislation to address the shortcomings in the application of existing laws. In doing so, ecological factors should gain primary relevance in mapping and monitoring existing primary and old-growth forests for their strict protection⁴. The International Union for Conservation of Nature categories I and II could serve as criteria for their strict protection, which should focus primarily on non-intervention management and on the protection of large-scale natural processes, excluding all extractive and habitat-altering activities, including logging.

Finally, the upcoming Forest Strategy should also ensure that **strict binding forest protection criteria** are included in the trade agreements that the EU enters into. The Forest Strategy should commit to include legally enforceable provisions to fight illegal logging, prevent deforestation and forest degradation, implement the Paris Agreement and require companies to meet international obligations.

3 The role of local communities

The questionnaire poses questions regarding the potential benefits for rural communities in forest management. First and foremost, forests must be protected and preserved for the long-term if rural communities are to continue benefitting from them. This requires a policy and legal framework that **provides immediate incentives as well as long-term benefits for rural communities to engage in sustainable forest management**. Clear EU and Member State legal frameworks that enable those actions and provide long-term protections for community interests in sustainable forest management are

⁴ Communication from the Commission on EU Biodiversity Strategy for 2030, cited above, section 2.1.

essential. Fundamentally, those legal frameworks should be developed with direct participation and input from the communities that they are intended to support.

Secondly, the benefits flowing to rural communities would likely increase to the extent that the broader public interest in sustainable forest management is reflected in local, national and EU policy frameworks. Forests do not just provide benefits (financial and non-financial) to rural communities. They provide essential benefits for biodiversity preservation, climate regulation and carbon sequestration, which are of increasing importance to the welfare of national, EU and global populations. The new Forest Strategy should provide a policy framework that **reflects the critical importance of preserving and maintaining the integrity of EU and global forests to the collective public interest** and recognise – and reward – the essential role that local and rural communities (can) play in protecting, preserving and responsibly managing those forests.

In particular, the new Strategy should include the establishment of **dedicated and targeted support mechanisms** for Indigenous Peoples, local communities, their representative organisations and local civil society organisations in and outside the EU to increase the legal and political recognition and protection of the customary and collective tenure rights of Indigenous Peoples and local communities in forest areas.

In addition, the new Strategy must ensure that **Indigenous Peoples, local community and civil society stakeholders from forest areas in Member States and third countries have a seat at the table and a say in decisions** about policies, investments and agreements that may affect their territories, resources, rights or interests, including any trade and/or investment agreements the EU is proposing, negotiating or reviewing with high forest-cover countries, such as Indonesia and the MERCOSUR bloc. It is therefore essential to ensure that those stakeholders are supported and enabled to participate effectively and safely in such discussions and have freedom and capacities to exercise their rights and choices meaningfully.

Local communities deserve a place at the centre of forest management and preservation, and their invaluable role must be recognised in the upcoming Forest Strategy.

4 Certification schemes

Certification schemes for wood can help efforts to achieve compliance with certain legislation, e.g. the EUTR. However, these schemes have multiple weaknesses and differ between each other. They do not – and should not – remove the obligations on operators to access specific information about timber and its origin or to assess and mitigate the risk that it was illegally harvested. Compliance is ultimately the responsibility of industry players and certification is merely a risk mitigation tool which can be considered in the risk assessment process, but in no way releases those players from their obligations to comply. Industry players must still conduct due diligence and, in doing so, must primarily consider the extent to which certification tools satisfy the criteria set out in the relevant legislation, and the veracity and reliability of the certification. While well-recognised certification schemes can support the due diligence process, they do not remove the legal responsibility for ensuring that timber placed on the EU market has not been logged illegally.

In summary, **certification schemes should not be considered a sufficient factor to establish compliance of any timber/wood related products or any other forest-risk commodity.** This should be consistently reflected in the new Forest Strategy so as to ensure uniformity of the actions taken thereunder.

5 Forest biomass

The EU strategies should be aligned in maximising the protection of forests, being the crucial player in the fight against climate change. This goal cannot be achieved without excluding forest biomass from the definition of renewable energy sources. Thus, with great concern we note the recent draft proposal for the technical screening criteria under the EU Taxonomy Regulation, which seem to be building on the false perception that biomass energy is carbon-neutral and renewable. This is not the case.

Avoiding the replacement of fossil fuels with forest biomass is a complex global and systemic issue that needs to be recognized when discussing the future of EU forests. Aside from the negative impacts on biodiversity⁵ and the threat of driving illegal logging within the EU⁶, the role of forest biomass is especially difficult to justify in the context of the need to urgently reduce emissions in the next decade. Scientific evidence has shown that burning wood for energy will actually contribute to increasing global temperatures⁷, as newly planted trees need dozens or even hundreds of years to absorb the carbon released by burning the trees they are replacing⁸. Classifying biomass as a renewable source of energy is a highly significant loophole that allows Member States to achieve climate and energy targets without reducing their real impact on the climate. Burning biomass should not therefore be regarded as “clean”, renewable or even a responsible energy solution and should be phased out as an inefficient source of energy that goes directly against the crucial goal of protecting EU forests and halting global climate change. In light of the above, the **Commission must firmly reject the stance on biomass advocated by some Member States**, which falsely suggest that burning the EU's forests is a renewable substitute for fossil fuels⁹.

Moreover, the biomass sustainability criteria set out in the Renewable Energy Directive are not sufficiently protective of the environment, as they do not consider the full carbon lifecycle nor the limited supply of truly-sustainable feedstock¹⁰. In addition, the Draft Implementing Regulation on the evidence required to demonstrate compliance with the sustainability criteria for forest biomass only confirms the flaws in the sustainability criteria, leaving significant extremely broad leeway to biomass operators to establish compliance with those criteria, rather than establishing clear limits¹¹. It should be noted that the negative impacts of biomass burning on the climate, biodiversity, resource efficiency or air quality are to a great extent associated with the scale of deployment and type of feedstock used, rather than with the sustainable production or mobilisation of biomass resources. While forest biomass should be excluded from renewable

⁵ Cary Institute of Ecosystem Studies, *Wood pellets: Renewable, but not carbon neutral: Turning forests into fuel comes at an environmental cost* (2018).

⁶ Environmental Investigation Agency, *Stealing the last forest: Austria's largest timber company, land rights, and corruption in Romania* (2015).

⁷ Duncan Brack, *Woody Biomass for Power and Heat Impacts on the Global Climate* (2017).

⁸ Cary Institute of Ecosystem Studies, *Wood pellets: Renewable, but not carbon neutral: Turning forests into fuel comes at an environmental cost* (2018).

⁹ General Secretariat of the Council (Information from the Austrian delegation on behalf of the Austrian, Bulgarian, Croatian, Czech, Estonian, Finnish, Hungarian, Latvian, Lithuanian, Maltese, Polish and Slovak delegations), *Challenges and priorities in preparation of the EU Forest Strategy* (2021).

¹⁰ In addition, the applicability of these criteria is limited to installations with a total rated thermal input equal to or exceeding 20 MW in the case of solid biomass fuels, and with a total rated thermal input equal to or exceeding 2 MW in the case of gaseous biomass fuels (Article 29(1)(c) of REDII). See M. S. Booth, B. Mitchell, *Why the EU's RED II biomass sustainability criteria fail forests and the climate* (2020).

¹¹ *Draft Commission Implementing Regulation on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001 of the European Parliament and of the Council* (2021).

sources of energy altogether, the sustainability criteria set out in the Renewable Energy Directive should guarantee that the use of other types of biomass is limited to locally-available wastes and residues.

6 Forest Information

We recognise the need, resulting from our experience, for **increasing the quality, accessibility and harmonisation of data on forests at the EU level**, with a special emphasis on remote-sensing data on forests in protected areas. We call on the Commission to set a clear objective to tackle this need in the 2030 Forest Strategy.

The climate and biodiversity crises demand dedicated and collaborative efforts across Europe, which can be consistently monitored and evaluated. Currently, the state of EU forests is analysed mainly on the basis of sample-based forest inventories data. Therefore, the accuracy of data depends on the quality and quantity of the field sample and it may vary significantly across the EU. Remote sensing provides a solution that has already been used successfully in a number of projects across the globe¹². This technology is able to provide accurate, reliable, consistent and timely data on forests. Such data, collected in the same manner for all EU Member States, is also easily comparable. **Remote sensing, especially if combined with ground monitoring, has therefore a great potential to support implementation of EU forest-related policies.** In particular, remote sensing can be used to map and monitor old-growth forests and primary forests, to monitor protected areas more comprehensively, to improve land use planning for forest restoration or to verify compliance with existing and upcoming EU nature and climate legislation.

Today, although European satellites can already provide high-resolution forest imagery, the awareness of remote sensing's potential ability to support forest monitoring remains limited. **Publishing remote sensing data and its analyses on an EU online platform such as FISE would help make data accessible and visible to non-specialist audience.** Popularization and promotion of visually appealing forest imagery among EU citizens would also help raise awareness on problematic issues such as deforestation or forest degradation.

7 Forest Management

Launching the new Forest Strategy provides **an opportunity for a renewed debate on the shortcomings of current forest management practices.** From a biodiversity perspective and, based on our experience, many EU member states, for example Romania, manage their forests in a superficial manner. It often means that the adoption of Forest Management Plans (FMPs) is not followed by its correct implementation. In extreme, although not uncommon cases, FMPs are in force many years before appropriate assessment procedures are even initiated. Moreover, the access to FMPs is often limited as they tend not to be disclosed to general public. We call on the Commission to draw particular attention to these problems in the upcoming Strategy. **Timely environmental assessments and access to information are essential for effective forest management.** Reiterating that protection and restoration of forests should be at the core of the new Forest Strategy, we also call on the Commission to make it clear in the Strategy that **conservation and strict protection of forests are currently the most valuable management choice.**

¹² See for example: [maps of Global Forest Watch](#); [the FAO's global Forest Resource Assessments](#); Ake Rosenqvist et al *The potential of long-wavelength satellite-borne radar to support implementation of the Ramsar Wetlands Convention* (2007); J.L. Chen et al, *Satellite gravity measurements confirm accelerated melting of Greenland Ice Sheet* (2006); examples of maps [based on EO concerning forest biomass estimates](#).

Leaving significant areas of European forests to mature and eventually regain an old growth status will optimize the ecosystem services they provide to us.

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